

## **INVESTIGATIVE COMMITTEE ON ETHICS**

**DATE:** March 20, 2008

**CALLED TO ORDER:** 6:00 p.m.

**ADJOURNED:** 6:37 p.m.

### **ATTENDANCE**

#### ATTENDING MEMBERS

Ginny Cain, Co-Chair  
William Oliver, Co-Chair  
Paul Bateman  
Marilyn Pfisterer

#### ABSENT MEMBERS

### **AGENDA**

Review of Newspaper Articles  
Determination of Scope of Investigation

## **INVESTIGATIVE COMMITTEE ON ETHICS**

The Investigative Committee on Ethics of the City-County Council met on Thursday, March 20, 2008. Co-chair Ginny Cain called the meeting to order at 6:00 p.m. with the following members present: Co-Chair William Oliver, Paul Bateman, and Marilyn Pfisterer. Robert Elrod, General Counsel, represented Council staff.

Co-Chair Cain introduced Co-Chair Oliver and the other members of the Committee and stated that this committee was established by a majority vote of the full council on October 29, 2007 on Proposal No. 182, 2007 (Council Resolution No. 80, 2007). She read the proposal into the record. [Clerk's Note: Copies of the proposal are on file in the Clerk's Office.] Co-Chair Cain said that the committee's purpose is three-fold: 1) to determine if the public allegations against Councillor Monroe Gray are true, 2) if true, whether such conduct warrants censure by the Council, and 3) to make recommendations for change in the Code of Ethics or other procedures, as may be appropriate, to assure that Councillors are held to the highest ethical standards. She added that while fulfilling the purposes of the committee, this body is granted the power to subpoena witnesses and documents, and the Clerk of the Council can be directed to employ and pay such attorneys, investigators or other staff as selected by this committee to insure a thorough investigation. Co-Chair Cain said that this work is of a serious nature and the committee will strive to practice due diligence, impartiality and integrity as they gather the facts and pursue the truth on behalf of the public and the Council. She added that this is not a personal attack, but a professional mandate to make sure all Councillors uphold the highest standards of ethics, in order to maintain the trust of the people they serve. She asked for opening comments from Co-Chair Oliver.

Co-Chair Oliver said that he attempted to e-mail Co-Chair Cain today with concerns he had about this evening's agenda. She informed him before the meeting that she has not had time to dissect and interpret that information. He said that it is wrong that this Council that was elected to serve effective January 1 is judging the actions and conduct of a member that occurred during the time of the previous Council. He said that all proposals, except for one rezoning, died at the end of the year, due to a new Council being seated. If they are going to censure a member from the past, they should call back Councillors Bill Dowden and Bob Massie for referring to citizens as thugs and gorillas.

Co-Chair Cain asked that Co-Chair Oliver stay within the subject of this meeting and not bring back past events. Co-Chair Oliver said that he does not want to revisit the past, and that is the point of his remarks. He said that this committee is supposed to be a joint effort and there are two chairs, yet Co-Chair Cain has the gavel. Co-Chair Cain

said that the gavel was placed between their two chairs and is still in that position. Co-Chair Oliver said that Co-Chair Cain does not have the right to cut him off until he finishes his remarks. Even though he disagreed with many comments made by Co-Chair Cain to start the meeting, he let her finish her comments. Co-Chair Cain said that she has no problem letting Co-Chair Oliver continue his comments, but simply wanted him keep them focused on the agenda subject of this meeting. She encouraged him to continue with his remarks.

Co-Chair Oliver said that if it is not the law to be followed that prior Council business ends when a new Council is seated, then they should also bring back Councillor Jody Tilford, about whom it was reported that he was suspect of breaking Park rules. He said that he personally would be opposed to going back and revisiting any of these issues, and he feels the same applies in this instance. He said that Co-Chair Cain referred to this as a serious matter and a professional mandate. He said that he is glad to hear her say that, because he feels a lawyer's opinion is needed before they start the work of the committee. He said that according to disciplinary procedure rules in Roberts Rules of Order and Sec. 151-58, he feels an attorney's opinion is needed about proceeding without clear guidelines on how to proceed. He said that Co-Chair Cain is an attorney, but he is not, and he feels they do not have the representation and advice they need. He said that since Roberts Rules of Order applies, he would suggest that this committee adopt Sec. 151-58 and Roberts Rules of Order, Chapter 20, to apply to this proceeding. He said that this committee should be conducted in private in an executive session to consider possible censure of Councillor Gray. The committee can then report to the Rules and Public Policy Committee and can hear from Councillor Gray in private before making such a report. He moved, seconded by Councillor Bateman, to follow Roberts Rules of Order in this matter.

Co-Chair Cain asked Mr. Elrod to respond to this motion. Mr. Elrod stated that Roberts Rules of Order applies to any committee of this body where the Code is not clear, and it would be appropriate to apply those rules, if found necessary by the committee. He said that in order to exclude the public from a meeting, however, notice has to be given in advance. Co-Chair Cain said that the agenda for this meeting is simply to review allegations from articles published in *The Indianapolis Star*, which are already public record, and then to decide on the next course of action. She said that she is not sure there is a need to hold that type of discussion in an executive session, since most of what they are reviewing has been at the forefront of public discussion.

Co-Chair Oliver said that there has not been much said on this issue lately. He said that not a day went by before the election that a certain Councillor was not featured on the front page with allegations, and yet, since the election took place and there was a change of party leadership, not one story has appeared. He said that this causes concerns about the allegations, integrity, and motivation of those at *The Star*.

Councillor Pfisterer said that there were a number of allegations reported in *The Star* that can be proven one way or another with some investigation by this committee. She

said that this is not a personal attack, but this committee is simply charged with finding the truth. She said that what has bothered her most this past year is that the entire Council has been painted in a negative light. She would like this committee to find the truth and show the public that the Council does have high ethical standards. To do that, they need to go through this process.

Councillor Bateman agreed that the Council needs to present high ethical standards to the public. While the ethics standards possibly do need reviewed, he is opposed to making this a witch hunt and taking part in revenge or retaliation against any one individual. Co-Chair Cain said that as far as she knows, all of the members of this committee are opposed to such an approach. She said that a resolution was passed by the Council which formed this committee, and as members of that committee, they are all accountable to proceed with the objectives set forth in that resolution. She said that the articles are simply allegations, and she is not saying they are true or untrue, but this committee was formed to help hold Council members to a higher standard, which she believes is everyone's goal. She said that these standards would apply to her and every other member of this committee as well and not just one individual.

Co-Chair Oliver said that he questions the process and procedure that was laid out before they got here this evening. He said that Mr. Elrod indicated an executive session was acceptable, and reading off reams of information and allegations that the editor of *The Star* shared with Co-Chair Cain should not be done in a public forum. Co-Chair Cain said to be clear, she has not had any contact with the editor of *The Star*, and this agenda and procedure that she offered is simply to address the three purposes this committee is charged with in the ordinance. She said that in order to do that, she did ask *Star* reporter Brendan O'Shaughnessy for copies of the articles that pertain to these allegations, but the protocol and procedure of this meeting is based solely on the tasks the committee was charged with in the resolution. She said that because she is a lawyer, she simply looks at facts and likes to have as much information as she can find to help her make a decision.

Councillor Pfisterer asked if there is anything still to be determined before the Ethics Board at this time. Mr. Elrod said that he is not sure, but he believes that should be one of the first things this committee asks. He suggested, besides requesting this information from the chairman of the Ethics Board, that the committee also request it from the Prosecutor and the commissioner of the disciplinary committee of the State Bar Association. He said that this committee may need to wait until any pending investigations are resolved or concluded. Co-Chair Cain asked if this request should come from the Council as a whole or this committee. Mr. Elrod suggested the committee ask the President of the Council to send a letter to these three entities, with a copy to Corporation Counsel, who serves as secretary to the Ethics Board.

Councillor Pfisterer said maybe this could be considered the first step for the committee. Co-Chair Cain said that this would be a great start, and there may be more appropriate

arenas in which to handle this issue, rather than in this committee. She added that there is still a motion on the floor, which needs to be voted on.

Councillor Pfisterer asked for clarification as to what the motion actually is so that she can clearly understand what she is voting on. She asked if the motion is to hold the next meeting in an executive session. Co-Chair Oliver said that this is his motion, if it is ruled to be legal. Mr. Elrod said that it is legal to hold an executive session on a personnel matter to decide disciplinary procedures, but a notice should be sent out to indicate that the meeting is not open to the public. Co-Chair Cain asked if the executive session would just be for one meeting or for all of these committee hearings. Mr. Elrod said that the Open Door Law is very interesting in that it allows this body to deal with personnel matters in an executive session behind closed doors, but then the body has to make a report later in public. He said that they could call an executive session to discuss disciplinary matters, but they could not discuss changes in the Ethics Code in an executive session. He said that they can also decide in that executive session how they wish to proceed.

Co-Chair Cain said that it seems to her most of the allegations featured in these articles are ethical in nature, rather than criminal. She asked if it would be appropriate that anything found to be true then be given to the Ethics Board to determine how to proceed. Co-Chair Oliver said that the Ethics Board has already dealt with these allegations, and by further reviewing them, this committee seems to be trying to overturn or undo their decision. Co-Chair Cain said that the Ethics Board did not address all of the issues, but only a select few. Councillor Pfisterer asked if they can first send a letter to the Ethics Board to find out what is currently before them regarding this matter, and then a meeting can be set for an executive session after a response is received.

Councillor Bateman agreed that letters should be sent first to discover what has already been investigated or what is currently being investigated, and then the committee can proceed from there.

Mr. Elrod said that this committee's function may be overridden by an ethics ordinance that will be introduced Monday evening. He said that the committee's charge to look at the current ethics ordinance may be a moot point. Co-Chair Cain said that perhaps the administration, who submitted the new proposal for introduction, can come before the committee to discuss those changes. Mr. Elrod said that the proposal has been referred to the Rules and Public Policy Committee, which will start having public session hearings on the entire ethics code soon. He said that if that proposal passes in the next 30 days, there may not be much left for this committee to do.

Co-Chair Cain said that the first step then is to send letters to the three entities Mr. Elrod suggested inquiring about current investigations. She said that it is likely any disciplinary action would have to come from one of them anyway, and not from this committee. Co-Chair Oliver said that the second step would be to set up an executive

session. Co-Chair Cain asked if they can call the committee into an executive session right now. Mr. Elrod said that the agenda notice that was publicized for this meeting did not indicate it would be an executive session closed to the public, and therefore, they would have to send out a notice first before doing so. Co-Chair Cain asked if they should then wait for responses to these letters before setting up a time for the executive session. Mr. Elrod said that maybe setting a date for the executive session and referring to it in the letters would help insure responses are received in a timely manner.

Councillor Pfisterer moved to make a friendly amendment to Co-Chair Oliver's motion to also send a letter to the Ethics Board, as well as setting up an executive session. Co-Chair Cain said that she would second that motion with the slight amendment to include sending letters also to the Prosecutor and the commissioner of the disciplinary committee of the State Bar Association, as suggested by Mr. Elrod. Councillor Bateman seconded the motion, as amended. Co-Chair Oliver accepted the friendly amendment, and the motion, as amended, carried by a vote of 4-0.

Co-Chair Cain asked if a month is sufficient time to require a response and set up an executive session meeting date. Mr. Elrod said that 30 days should not be a hardship, as the committee is simply asking the status and not the substance of any investigations. There was discussion regarding an available meeting date and all members consented to setting the executive session for Thursday, April 17, 2008 at 6:00 p.m.

Councillor Bateman referred to remarks made earlier by Co-Chair Oliver and stated that he feels counsel should be provided to the Democrat members of this committee. He said that because Co-Chair Cain is an attorney, the Republican members have an unfair advantage. Co-Chair Cain said that she does have a law degree, but she is not acting as an attorney in this matter and is simply here as a Councillor.

Councillor Pfisterer said that, on behalf of the Council body as a whole, she would like to wish former Councillor Steve Talley a speedy recovery, as he underwent surgery this afternoon.

There being no further business, and upon motion duly made, the meeting was adjourned at 6:37 p.m.

Respectfully Submitted,

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Ginny Cain  
Co-Chair

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William Oliver  
Co-Chair